

HOUSE BILL NO. 388

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-SECOND LEGISLATURE - SECOND SESSION

BY REPRESENTATIVE EASTMAN

Introduced: 2/22/22

Referred: Health and Social Services, Labor and Commerce

A BILL

FOR AN ACT ENTITLED

1 **"An Act requiring physicians to prescribe requested drugs; requiring pharmacists to fill**
2 **prescriptions; and relating to prescription drug coverage under health discount plans**
3 **and health care insurance plans."**

4 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 * **Section 1.** AS 08.64.326(a) is amended to read:

6 (a) The board may impose a sanction if the board finds after a hearing that a
7 licensee

8 (1) secured a license through deceit, fraud, or intentional
9 misrepresentation;

10 (2) engaged in deceit, fraud, or intentional misrepresentation while
11 providing professional services or engaging in professional activities;

12 (3) advertised professional services in a false or misleading manner;

13 (4) has been convicted, including conviction based on a guilty plea or
14 plea of nolo contendere, of

1 (A) a class A or unclassified felony or a crime in another
 2 jurisdiction with elements similar to a class A or unclassified felony in this
 3 jurisdiction;

4 (B) a class B or class C felony or a crime in another jurisdiction
 5 with elements similar to a class B or class C felony in this jurisdiction if the
 6 felony or other crime is substantially related to the qualifications, functions, or
 7 duties of the licensee; or

8 (C) a crime involving the unlawful procurement, sale,
 9 prescription, or dispensing of drugs;

10 (5) has procured, sold, prescribed, or dispensed drugs in violation of a
 11 law, or refused to prescribe a drug in violation of AS 08.64.361, regardless of
 12 whether there has been a criminal action or harm to the patient;

13 (6) intentionally or negligently permitted the performance of patient
 14 care by persons under the licensee's supervision that does not conform to minimum
 15 professional standards even if the patient was not injured;

16 (7) failed to comply with this chapter, a regulation adopted under this
 17 chapter, or an order of the board;

18 (8) has demonstrated

19 (A) professional incompetence, gross negligence, or repeated
 20 negligent conduct; the board may not base a finding of professional
 21 incompetence solely on the basis that a licensee's practice is unconventional or
 22 experimental in the absence of demonstrable physical harm to a patient;

23 (B) addiction to, severe dependency on, or habitual overuse of
 24 alcohol or other drugs that impairs the licensee's ability to practice safely;

25 (C) unfitness because of physical or mental disability;

26 (9) engaged in unprofessional conduct, in sexual misconduct, or in
 27 lewd or immoral conduct in connection with the delivery of professional services to
 28 patients; in this paragraph, "sexual misconduct" includes sexual contact, as defined by
 29 the board in regulations adopted under this chapter, or attempted sexual contact with a
 30 patient outside the scope of generally accepted methods of examination or treatment of
 31 the patient, regardless of the patient's consent or lack of consent, during the term of the

physician-patient relationship, as defined by the board in regulations adopted under this chapter, unless the patient was the licensee's spouse at the time of the contact or, immediately preceding the physician-patient relationship, was in a dating, courtship, or engagement relationship with the licensee;

(10) has violated AS 18.16.010;

(11) has violated any code of ethics adopted by regulation by the board;

(12) has denied care or treatment to a patient or person seeking assistance from the physician if the only reason for the denial is the failure or refusal of the patient to agree to arbitrate as provided in AS 09.55.535(a);

(13) has had a license or certificate to practice medicine in another state or territory of the United States, or a province or territory of Canada, denied, suspended, revoked, surrendered while under investigation for an alleged violation, restricted, limited, conditioned, or placed on probation unless the denial, suspension, revocation, or other action was caused by the failure of the licensee to pay fees to that state, territory, or province; or

(14) prescribed or dispensed an opioid in excess of the maximum dosage authorized under AS 08.64.363.

* **Sec. 2.** AS 08.64 is amended by adding a new section to read:

Sec. 08.64.361. No physician right to refuse prescription. (a)

Notwithstanding any other provision of law and except as provided in this section, a physician shall prescribe a drug requested by an individual with whom the physician has established a physician-patient relationship.

(b) A physician who believes that an individual will not benefit from a requested drug, or who believes that the drug poses a risk that outweighs its expected benefit to the individual, shall indicate that the drug has been prescribed against professional advice and describe the reason underlying that belief on the prescription.

(c) A physician may refuse to prescribe a drug recognized as a controlled substance under federal or state law. In this subsection, "controlled substance" includes an immediate precursor to a controlled substance.

(d) A physician may refuse to prescribe a drug to an individual if the physician

believes the individual will use the drug to commit suicide, terminate the life of another, or induce an abortion.

(e) A physician who indicates under (b) of this section that a drug is being prescribed against professional advice, or the physician's employer, may not be held liable in a criminal or civil action for any outcome caused by the prescribed drug. A physician who prescribes a drug against professional advice to an individual may require the individual to acknowledge in writing that the physician and the physician's employer may not be held liable for any outcome caused by the prescribed drug.

(f) A person may not direct a physician to indicate that a prescription written by the physician is against professional advice. A physician who is directed by a person to indicate that a prescription is written against professional advice shall immediately notify the board. Failure to immediately notify the board is grounds to revoke a physician's license to practice.

(g) A physician who believes that a drug requested by an individual may have a harmful interaction with another drug, supplement, or other pharmacologically active substance used by the individual shall indicate on the prescription that the prescribed drug may cause a harmful interaction.

(h) If a physician violates (a) or (b) of this section, the board shall suspend the physician's license to practice for not less than one year. Each patient impacted by a violation shall constitute a separate offense, and each separate offense shall result in a consecutive period of time of suspension.

* **Sec. 3.** AS 08.80 is amended by adding a new section to read:

Sec. 08.80.325. Duty to dispense prescription drug order. (a) Notwithstanding any other provision of law and except as provided in this section, a pharmacist shall dispense a prescription drug order prescribed by a physician against professional advice under AS 08.64.361.

(b) A pharmacist filling a prescription drug order that has been prescribed under AS 08.64.361(b) shall affix labeling that prominently warns that the drug was prescribed and dispensed against professional advice and shall include a description of the reason for the warning. A pharmacist may not be held liable in a criminal or civil action for any outcome caused by a drug dispensed under this subsection.

(c) A pharmacist who believes that a prescription drug order may have a harmful interaction with another drug, supplement, or other pharmacologically active substance used by the holder of the prescription shall affix labeling that prominently indicates that the prescribed drug may cause a harmful interaction.

(d) A pharmacist may not decline to order a drug available from a distributor to prevent filling a prescription drug order under (a) of this section.

(e) A pharmacist may decline to fill a prescription drug order to an individual if the pharmacist believes the individual will use the drug to commit suicide, terminate the life of another, or induce an abortion.

(f) A pharmacist may not charge a higher price or impose an additional fee to fill a prescription drug order prescribed by a physician under AS 08.64.361.

* **Sec. 4.** AS 08.80.460(b) is amended to read:

(b) A person who violates the provisions of AS 08.80.295, [OR] 08.80.297, or 08.80.325(a) may be punished by a civil fine in an amount established by the board in a schedule or schedules establishing the amount of civil fine for a particular violation. The schedule or schedules shall be adopted by the board by regulation. Any civil fine imposed under this section may be appealed in the manner provided for appeals in AS 44.62 (Administrative Procedure Act).

* **Sec. 5.** AS 21.36.505(a) is amended to read:

(a) A person may not sell, market, promote, advertise, or otherwise distribute a health discount plan unless

(1) each advertisement, policy, document, information, statement, or other communication regarding the health discount plan and the plan itself contain a statement, in bold and prominent type, that the health discount plan is not insurance;

(2) the discounts offered under the health discount plan are specifically authorized by a contract with each provider of the services or supplies listed in conjunction with the plan;

(3) the health discount plan states the name, address, and telephone number of the administrator of the plan;

(4) the person makes readily available to the consumer a complete, accurate, and up-to-date list of providers participating in the plan that offer discounted

1 health care services or supplies in the consumer's local area and the discounts offered
2 by the providers;

3 (5) the person provides the consumer the right to cancel the health
4 discount plan within 30 days after purchase of the plan; [AND]

5 (6) the person provides the consumer with a full refund of all payments
6 made, except for a nominal processing fee, within 30 days after notification of
7 cancellation of the plan under (5) of this subsection; **and**

8 **(7) the discounts offered under the health discount plan apply to**
9 **prescription drug orders obtained under AS 08.64.361.**

10 * **Sec. 6.** AS 21.42.420 is amended by adding a new subsection to read:

11 (b) A health care insurance plan may exclude coverage for prescription drugs
12 obtained against professional advice under AS 08.64.361.

13 * **Sec. 7.** AS 21.54.100(a) is amended to read:

14 (a) A health care insurer that offers, issues for delivery, delivers, or renews a
15 health care insurance plan in the group market may not establish rules for eligibility,
16 including continued eligibility and waiting periods under the plan, for an individual or
17 dependent of an individual based on

18 (1) health status;

19 (2) medical condition, including physical and mental illnesses;

20 (3) claims experience;

21 (4) receipt of health care;

22 (5) medical history;

23 (6) genetic information;

24 (7) evidence of insurability, including conditions arising from acts of
25 domestic violence; [OR]

26 (8) disability; **or**

27 **(9) the individual obtaining a prescription drug under**
28 **AS 08.64.361.**